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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 670,181	09 26 2000	Alfred D. Roeske	END016	5781

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Virginia S. Medlen
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Suite 350
San Francisco, CA 94105

EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 05 21 2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/670,181

Applicant(s)

ROESKE, ALFRED D.

Examiner

Cephia D. Toomer

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 22-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 22-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This Office action is in response to the amendment filed February 24, 2003 in which all claims were canceled and claims 22-41 were added.

The objection to the specification is withdrawn in view of the amendment to the specification.

The previous rejection of the claims under 35 USC 112, first paragraph, is withdrawn in view of applicant canceling the rejected claims.

The 102 rejections as anticipated by JP 63168494 or Phadoemchit are withdrawn in view of applicant canceling claims 1-4.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 22-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the original filed specification for a candle composition that is "substantially free of any petroleum waxes" (claim 22) or a "paraffin-free candle" (claims 32 and 39).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao (US 6,284,007).

Tao teaches a vegetable lipid-based composition and candle comprising fully hydrogenated triglycerides and free fatty acids (see col. 1, lines 60-67). The triglycerides and free fatty acids are obtained from plant sources (see col. 2, lines 51-55) and are preferably saturated (see col. 3, lines 1-2). The free fatty acid/triglyceride mixture contains from 1-99% triglyceride and from 1 to 99% free fatty acid (see Example 5). Tao teaches the limitations of the claims other than the difference that is discussed below.

Tao differs from the claims in that he does not specifically teach the claimed iodine value. However, it would be reasonable to expect that the triglycerides and fatty acids of Tao would possess the claimed iodine value because Tao teaches that the triglycerides are fully hydrogenated and that he prefers triglycerides and free fatty acids that are saturated.

Applicant argues that Tao fails to teach a candle composition that is substantially free of petroleum wax or paraffin-free and that burns substantially soot-free. Applicant argues that Tao fails to teach or suggest that the fatty material of his invention is fully

hydrogenated. Applicant argues that Tao is only interested in making a solid candle and is not concerned with soot reduction.

At col. 1, lines 60-63, Tao states, "In one preferred embodiment, the vegetable lipid- based composition includes about 51% by weight to about 100% by weight of the triglyceride or fatty acid/triglyceride mixture and up to about 49% by weight of the petroleum wax." This teaching clearly suggests the absence of the wax since the triglyceride/fatty acid mixture may comprise 100% of the composition.

Tao's teaching of triglycerides being either partially or fully hydrogenated clearly suggests fully hydrogenated low iodine value triglycerides.

With respect to Tao being only concerned with producing a solid candle and expressing no interest in soot reduction, it is well settled that patentees rationale may be different from applicant yet at the same time suggests what applicant has done. Tao teaches a candle composition that is substantially as claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22, 23, 27, 30, 32, 35 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Calzada (US 6,063,144).

Calzada teaches a non-paraffin candle composition comprising plant source stearic acid and hydrogenated vegetable wax (hydrogenated castor oil) (see col. 2, lines 9-28; col. 3, lines 12-15). Calzada desires a stearic acid and vegetable wax that have an iodine number no greater than 7 (see col. 2, lines 51-53 and col. 3, lines 9-12). Accordingly, Calzada teaching all material limitations of the claims anticipates the claims.

Applicant argues that Calzada does not teach or suggest that the candle composition as a whole has an IV of less than 10. Applicant argues that Calzada does not take into consideration the other components that may be present in the candle composition.

Calzada teaches that the stearic acid and vegetable wax each have an IV of no greater than 7. In example 2, Calzada exemplifies a candle composition containing stearic acid, hydrogenated castor oil, fragrance and an oxidation inhibitor. There is nothing in this composition that would raise the IV of the composition to greater than 7. Furthermore, as shown in this example, the vegetable oils are optional and would not increase the IV of the composition as a whole.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

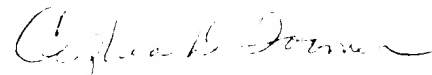
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 703-308-2509. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Cephia D. Toomer
Primary Examiner
Art Unit 1714

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May 20, 2003